

BEFORE

THE PUBLIC SERVICE COMMISSION OF

SOUTH CAROLINA

DOCKET NO. 2014-346-WS

IN RE:)	
)	
Application of Daufuskie Island Utility)	RESPONSE IN OPPOSITION TO PETITION FOR RECONSIDERATION
Company, Inc. for Approval of an)	
Adjustment for Water and Sewer Rates,)	
Terms, and Conditions)	

Haig Point Club and Community Association, Inc. (“HPCCA”), Melrose Property Owner’s Association, Inc. (“MPOA”), and Bloody Point Property Owner’s Association (“BPPOA”) (together “POAs”) hereby respond to the Petition filed by Daufuskie Island Utility Company, Inc. (“DIUC”) on February 20th seeking reconsideration or rehearing of Commission Order No. 2018-68 (the “Order on Rehearing”). As set out herein, the Commission should deny the Petition for Reconsideration because the factual findings of the Commission are supported by substantial evidence and the Commission committed no error of law. Moreover, the Commission should consider amending the Order on Rehearing to adopt the POAs’ position as set out herein.

I. ARGUMENT

DIUC raises three issues in its Petition: 1) The Commission erred in not including \$699,361 in utility plant in service; 2) The Commission erred in failing to adopt the depreciation expense and accumulated depreciation proposed by DIUC; and 3) the Commission erred in excluding \$542,978 in rate case expenses.

As a predicate matter, DIUC’s assertion that the Order on Rehearing “improperly applied the Supreme Court’s decision” (*Daufuskie Island Util. Co., Inc. v. S.C. Off. Of Reg. Staff*, 420

S.C. 305, 803 S.E.2d 280 (2017) (“*Daufuskie*”) to the issues DIUC raises in its Petition for Reconsideration is simply wrong. The Supreme Court Decision considered none of these issues and made no “findings” regarding any of them. The Supreme Court ordered that the Commission conduct a *de novo* hearing. The Commission conducted a *de novo* rehearing in which some issues were litigated and some previously litigated issues were not litigated. The “guidance” provided by the Supreme Court addressed 1) inclusion of the elevated tank site in rate base; 2) property tax expense; and 3) bad debt expense. *Daufuskie*, 420 S.C. 305, 316 803 S.E.2d 280, 286. The Order on Rehearing, in turn, adopted DIUC’s position on those three issues.

A. The Commission’s Decision to Exclude Certain Utility Plant in Service is Supported by Substantial Evidence

DIUC claims that the ORS did not identify those plant assets the Commission, in accepting ORS’s evidence on this point, excluded from rate base (Petition for Reconsideration pp. 2-3). This allegation is disingenuous. First, ORS witness Gearhart testified about the specific process ORS underwent to review the rate base proposed by DIUC and make appropriate adjustments:

In step one, ORS verified that the operating experience and rate base, reported by DIUC in its Application, were supported by DIUC's accounting books and records for the twelve 11 months ended December 31, 2014, the test year chosen by DIUC ("test year"). *In the second step, ORS tested the underlying transactions in the books and records for the test year to ensure that the transactions were adequately supported, had a stated business purpose, were allowable for ratemaking purposes, and were properly recorded.* Lastly, ORS's examination consisted of adjusting, as necessary, the revenues, expenditures, and capital investments to normalize the Company's operating experience and rate base, in accordance with generally accepted regulatory principles and prior Commission orders.

(Hearing Transcript at p. 489, ll. 8-17). (Emphasis added).

Notably, the process followed by ORS is exactly that required by the Supreme Court in *Utils*.

Servs. Of S.C. v. S.C. Office of Regulatory Staff, 392 S.C. 96, 708 S.E.2d 755 (2011) (“*Utilities*”): 1) to the extent that the items on DIUC’s books submitted in support of its application were entitled to a “presumption of reasonableness,” that presumption is not “dispositive.” *Utilities*, 392 S.C. 109, 708 S.E.2d 762; 2) when ORS sought support for the “transactions in the books and records” of DIUC, and particularly invoices to support the value of the items of plant in question, then any “presumption of reasonableness” DIUC may have enjoyed was removed, and the company was required to substantiate its claimed amounts. *Id.*; 3) as set out below DIUC simply failed to do so, not just in both the original and rehearing stages of this Docket, but in the previous rate case Docket.

Second, the record is clear, through the testimony of ORS witness Gearhart in the original Hearing (Hearing Transcript at p. 496, ll. 19-21) as adopted by ORS witness Sullivan in the Rehearing and adjusted to reflect the decision in *Daufuskie*, how the ORS adjusted the plant in question. (Rehearing Transcript p. 451, ll. 12-23, p. 452, ll. 1-4; Rehearing Exhibit 8).

Third, the ORS conducted an exit conference with DIUC and reviewed its adjustments to DIUC’s application. (Rehearing Transcript p. 487, ll. 1-3). Mr. Guastella’s testimony in the Merits Hearing (Hearing Transcript pp. 202-203) makes clear that 1) ORS held such an exit conference; 2) ORS provided DIUC with work papers following the exit conference; and 3) that as a result of its exit conference with ORS and the work papers ORS provided DIUC knows *exactly* what “undocumented expenses from gross plant in service” were removed by ORS:

Upon review of ORS’s testimony and exhibits from the last rate case, I noted the same statement appears; however, in that case ORS did provide amounts by type of plant within its testimony. In the instant case, ***ORS provided DIUC with work papers as a follow up to our audit exit conference call that enable us to identify what we think are the specifics of its adjustments.*** The largest adjustment relates to the storage tank and facilities that I discussed above. ***The other adjustments shown in the work papers are for items of plant that are specifically identified***

by plant account and year of installation. Apparently, a lack of invoices is the sole basis for ORS's position that those costs are "undocumented." [emphasis added].

Also clear is that DIUC failed to provide invoices to document those assets in Docket 2011-329-WS, and then failed again in the current Docket (in both the original phase and in the rehearing) to provide those invoices. In other words, DIUC did not carry its burden to demonstrate its entitlement to include those assets in rate base in Docket No. 2011-229-WS, and it could not demonstrate that entitlement in this Docket.

Next, DIUC claims that the ORS adjustment to plant in service is "not supported by the evidence or by the application of NARUC principles." (Petition for Reconsideration, pp. 3-6). As set forth above, ORS legitimately challenged the inclusion of those assets by DIUC, and DIUC could not justify their existence by producing invoices or other documentation. DIUC claims that by simply placing "itemized costs at specific amounts, by primary plant account and the year in service" on DIUC's books (Petition for Reconsideration p. 4) DIUC has established "documentation" sufficient to justify their inclusion in rate base. This assertion flies in the face of South Carolina law applicable to rate-making, which requires that those amounts claimed in a rate base be supported or verified. As the POAs have pointed out above and previously in this Docket, *Utilities* makes clear that DIUC's proposed asset values and expenses must be supported and verified. When the reasonableness of assets are challenged by ORS, any party, or the Commission, "the burden remains on the utility [DIUC] to demonstrate the reasonableness of its costs [and assets]." *Utilities*, 392 S.C. 109, 708 S.E.2d 762. In two separate dockets, DIUC put these assets on its books, the ORS asked for invoices to verify the amounts that were spent to obtain them (supporting documentation), and DIUC could not provide the necessary invoices.

Aware that it lacks invoices that could support or verify its "documentation" of the utility

plant costs at issue, DIUC then cites the NARUC Uniform System of Accounts (USoA) and its requirement of an “estimate of plant values when there is no supporting documentation available.” (Hearing Transcript at p. 204). But DIUC does not claim that it performed any such “estimate of plant values” or “original cost studies” to support asset values excluded by the ORS: “In this case, however, it is not necessary to estimate the costs because the costs are known and recorded, and the assets are used and useful in providing service to our customers.” (Hearing Transcript at p. 204). Instead, DIUC asserts that *ORS* bore the burden of doing so: “ORS should have estimated the reasonableness of the costs recorded and booked” (Petition for Reconsideration at p. 6). DIUC’s suggested approach is improper burden-shifting prohibited by *Utilities* and other applicable South Carolina law, Commission Rule, and Commission practice.

DIUC incorrectly claims the Commission and the ORS have failed to apply “NARUC principles,” conveniently (and, again erroneously) citing to those rules when trying to gain their benefit. But DIUC ignores the USoA entirely when its proper application might reduce DIUC’s rate base. Specifically, DIUC advocates (incorrectly) that the ORS has not followed the USoA, in the face of DIUC witness Guastella’s admission that Haig Point Utility Company (predecessor to DIUC) did not pay anything in exchange for those plant assets it received from Haig Point, Inc. (Rehearing Transcript pp. 50-51).

As cited by the POAs, NARUC (Section 271) defines Contributions in Aid of Construction (CIAC) as

[a]ny amount or item of money, services, or property received by a utility, from any person or governmental agency, any portion of which is provided at no cost to the utility, and which represents an addition or transfer to the capital of the utility, and which is utilized to offset the acquisition improvement or construction costs of the utility’s property, facilities, or equipment used to provide utility services to the public. (emphasis added).

(Rehearing Transcript at p. 312, ll. 18-26). The NARUC USoA, in turn, requires that entries to utility plant accounts donated to the utility must be offset by credits to CIAC. (Rehearing Transcript at p. 312, ll. 4-5).

Given DIUC's assertion that the Commission's Order on Rehearing should be modified to comply with NARUC guidelines and the USoA, it would be well-within the Commission's power and authority¹ to accept DIUC's proposal to follow the USoA and NARUC guidelines and 1) recategorize the plant Haig Point, Inc. donated to DIUC from paid in capital to CIAC, and 2) adjust depreciation expense and accumulated depreciation, as proposed by the POAs (Rehearing Transcript p. 363, ll. 12-17 and Exhibit LML-R3, Schedule C-2).

B. The Commission's Decision Regarding Depreciation Expense and Accumulated Depreciation Is Supported by Substantial Evidence

DIUC *disagrees* with the Commission's decision on depreciation expense and accumulated depreciation, which adopted ORS's testimony and evidence on that point. However, a simple disagreement from DIUC does not demonstrate that the Commission's decision to adopt the recommendation of ORS lacked substantial evidence. Under the substantial evidence standard, a finding upon which reasonable people may differ will not be set aside. *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 137, 276 S.E.2d 304, 307 (1981). As ORS witness Sullivan pointed out, ORS has consistently challenged the books of DIUC (specifically with respect to plant-in-service figures) "since at least Docket No. 2011-229-WS due to nonallowable plant and adjustments made by ORS in previous cases that have not been made by the Company." (Rehearing

¹ See Commission Order 2018-131 DOCKET NO. 2017-370-E - *Joint Application and Petition of South Carolina Electric & Gas Company and Dominion Energy, Incorporated for Review and Approval of a Proposed Business Combination between SCANA Corporation and Dominion Energy, Incorporated, as May Be Required, and for a Prudency Determination Regarding the Abandonment of the V.C. Summer Units 2 & 3 Project and Associated Customer Benefits and Cost Recovery Plans* issued February 21, 2018 (Commission amending a previous order on its own motion following a Petition for Reconsideration).

Transcript at p. 460). As such, DIUC and ORS offered differing views on depreciation expense and accumulated depreciation, and the Commission chose one. Its decision to choose ORS's evidence over DIUC's does not rise to reversible error.

C. The Commission's Decision Excluding \$542,978 in Rate Case Expenses is Supported by Substantial Evidence

In the rehearing phase of this Docket, DIUC "requested \$794,210 for current and unamortized rate case expenses recovered over 3 years." Order on Rehearing at p. 36, citing to Rehearing Tr. p. 473, ll. 15-17). The ORS recommended a rate case expense total of \$272,382 to be amortized over five years, adjusting the \$794,210 amount sought by DIUC to remove \$542,978 in invoices submitted by Guastella and Associates (GA). Order on Rehearing at pp. 36-37. To be clear, the Order on Rehearing adopted the shorter amortization of rate case expenses proposed by DIUC (3 years as opposed to the 5 years proposed by ORS), but agreed with ORS that those particular invoices must be excluded (Order on Rehearing at p. 39).

There is ample evidence in the Order on Rehearing and in the Record of this case to support the Commission's ruling excluding \$542,978 in GA invoices. DIUC's arguments in its Petition for Reconsideration ignore the fact that DIUC bears the burden of proof to justify those expenses that contribute to its revenue requirements (Order on Rehearing at p. 39). Moreover, DIUC's claim that it was not afforded an opportunity to "rebut" the ORS recommendation to exclude the GA invoices (Petition for Reconsideration pp. 12-14) is wrong. The record shows that DIUC had more than a "meaningful opportunity" to rebut the ORS recommendation. As set out in the Order on Rehearing (Page 37), ORS witness Hipp testified in her *Direct* Testimony (filed November 16, 2017 that "GA invoices contained mathematical errors, lacked sufficient detail, and/or did not appear to be paid. (Rehearing Tr. p. 476, ll. 11-18)." DIUC witness

Guastella addressed the issue in his Rebuttal Testimony (Order on Rehearing, p. 38), Ms. Hipp testified further in her Surrebuttal Testimony (Order on Rehearing pp. 37-38) about the inadequacies of the invoices, and the parties discussed same at length at the Rehearing. As such, DIUC's citation to *Utilities* is unavailing, as the facts in this case are not similar to those that existed in *Utilities*.

D. Despite the Additional Revenues DIUC Has Received from the Commission in its Last Two Rate Cases, its Petition for Reconsideration Seeks Even More Revenue

While substantial evidence supports the Order on Rehearing, the POAs would provide the Commission with some additional context surrounding the Petition for Reconsideration. The Order on Rehearing granted DIUC \$950,166 in additional revenues. (Order on Rehearing at p. 46). In Docket No. 2011-229-WS, Commission Order 2012-515 issued on July 10, 2012 granted DIUC \$291,485 in additional revenues. (Order 2012-515, Order Attachment 1, Settlement Agreement Exhibit 2). Accordingly, this Commission has granted DIUC a total of \$1,241,651 in additional annual revenue as a result of the proceedings in this Docket and those that took place in Docket No. 2011-229-WS.

To put this in perspective, DIUC earned \$714,996 in annual revenue with its test year rates in Docket No. 2011-229-WS. (Order 2012-515, Order Attachment 1, Settlement Agreement Exhibit 2). As a result of the Order on Rehearing, DIUC will have the opportunity to earn \$2,035,586 in annual revenue. (Order on Rehearing, p. 44, Paragraph 2; p. 46, Paragraph 4). Despite its annual revenue almost tripling, and the corresponding effect these rate increases have had and will have on DIUC customers, DIUC is telling the Commission that these revenues are still not enough.

II. CONCLUSION

For the foregoing reasons, and those set out in the response of ORS, the POAs respectfully request that the Commission deny DIUC's Petition. Given DIUC's assertion that the Commission's Order on Rehearing should be modified to comply with NARUC guidelines and the Uniform System of Accounts, the Commission should also exercise its discretionary power and authority by adjusting DIUC's rate base consistent with the proposal of the POAs in this Docket.

Respectfully submitted,

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March 16, 2018

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2014-346-WS

RE:

)	
Application of Daufuskie Island Utility)	CERTIFICATE OF SERVICE
Company, Inc. for Approval of an)	
Adjustment for Water and Sewer Rates,)	
Terms, and Conditions)	

This is to certify that I have caused to be served the Response in Opposition to Petition for Reconsideration of Haig Point Club and Community Association, Inc. ("HPCCA"), Melrose Property Owner's Association, Inc. ("MPOA"), and Bloody Point Property Owner's Association ("BPPOA") via first-class mail service and electronic mail service as follows:

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March 16, 2018